



I, JOSE TOVA, have read the foregoing pages of a copy of my interview with NTSB that was held on July 17, 2022, regarding accident RRD22FR011. These pages constitute a true and accurate transcription of same with the exception of the following amendments, additions, deletions or corrections:

PAGE NO: LINE NO: CHANGE AND REASON FOR CHANGE

□□□□□□□□□□

PG 1. SPEED SWING

NOT EXCAVATOR

PG 2.

UNION REPRESENTATIVE

NOT UNIDORAIL


PG 5. Line 14 DELETE

PG 5. Line 16 FREMONT NOT FILEMONT

I declare that I have read my statements and that it is true and correct subject to any changes in the form or substance entered here.

Date: 09.15.2022

Witness:


[Signature]

UNITED STATES OF AMERICA

NATIONAL TRANSPORTATION SAFETY BOARD

* * * * *

Investigation of: *

*

AMTRAK TRAIN COLLIDES WITH *

EXCAVATOR IN EAST OAKLAND, *

Accident No.: RRD22FR011

CALIFORNIA ON JULY 15, 2022 *

*

* * * * *

Interview of: JOSE TOVAR, Track Inspector
Union Pacific Railroad

Oakland, California

Sunday,
July 17, 2022

APPEARANCES:

JOE GORDON, Investigator in Charge
Roadway Worker Protection Group Chairman
National Transportation Safety Board

ADAM ALLEN,
Brotherhood of Maintenance of Way Employees

FELIPE AYALA, Track Inspector
Federal Railroad Administration

JAMES RIDGWAY, Track
California Public Utilities Commission

ROBERT NAGEL, Deputy Division Engineer
Amtrak

JEREMY RITCH,
Union Pacific Railroad

NARCISO ACOSTA,
Union Rail with Brotherhood of
Maintenance of Way Employees

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I N T E R V I E W

1
2 MR. GORDON: All right. Good morning, my name is Joe Gordon;
3 I'm the NTSB Roadway Worker Protection Group Chairman. We are
4 here on July 17th, 2022, in Oakland, California, to conduct an
5 interview with Jose Tovar, who works for Union Pacific Railroad.

6 This interview is in support of the NTSB investigation
7 RRD22FR011. In this accident a roadway maintenance machine was
8 struck by an Amtrak passenger train.

9 Before we begin we'll introduce everyone that's in the room,
10 state your organization or party. And so with that, Joe Gordon,
11 NTSB, spelling of last name's G-O-R-D-O-N.

12 MR. ALLEN: Adam Allen, A-L-L-E-N, Brotherhood of Maintenance
13 of Way Employee.

14 MR. AYALA: Felipe Ayala, FRA, Ayala, A-Y-A-L-A.

15 MR. RIDGWAY: James Ridgway, R-I-D-G-W-A-Y, CPUC Track.

16 MR. NAGEL: Robert Nagel, Amtrak, spelling of last name is N-
17 A-G-E-L.

18 MR. RITCH: Jeremy Ritch, Union Pacific, R-I-T-C-H.

19 MR. ACOSTA: Narciso Acosta Nacho, last name is A-C-O-S-T-A,
20 with Brotherhood of Maintenance of Way, Union representation.

21 MR. GORDON: All right. And, Jose, we spoke before, do we
22 have permission to record the interview today?

23 MR. TOVAR: Yes, you guys do have permission.

24 MR. GORDON: And your representative is beside you there?

25 MR. TOVAR: Yes.

1 MR. GORDON: Okay. And so we're going to be recording. I
2 talked to you about the transcription process. You'll get a
3 chance to review it. It will eventually become part of the public
4 docket so we, you know, can't guarantee any confidentiality.

5 INTERVIEW OF JOSE TOVAR

6 BY MR. GORDON:

7 Q. So if you could just start out by giving us your -- talking
8 about your railroad experience, when you came to the industry and
9 the jobs that you've held, kind of what you've done to this point.

10 A. Jose Tovar, current position, track inspector for Union
11 Pacific Railroad. Track inspector here out of Oakland. Started
12 in August 5th of 1996 as a track laborer then became a machine
13 operator, tamper, ballast tamper operator for about seven years,
14 17 years.

15 Foreman, foreman for a little bit then became the track
16 inspector out of Fremont district, was over there on the three
17 districts for about 17 years then decided to come to Oakland.
18 Before I left Newark I was a service unit safety coordinator for
19 the engineering department almost two years.

20 I'm not too much into traveling, which the position consisted
21 of traveling, so I decided to come close to home. Position here
22 in Oakland was open, took the position. I was a track inspector
23 and ever since I've been here and that was around 2016, 2015,
24 can't recall the exact year but and I've been the track inspector
25 here in Oakland.

1 Q. Okay.

2 A. And that's my current position.

3 Q. All right, thank you. And so if you would go to the morning,
4 you know, of the accident and just kind of talk to us about, you
5 know, from the time you came to work and your interaction with the
6 other employees that you worked with that day and, you know, any
7 conversation about the work that was going to be going, and just
8 walk us through, you know, up to the point of the accident.

9 And, you know, take as much time, you know, no detail's too
10 small, just give us a recount of that day if you could?

11 A. Well, it was going to be a busy day but just like normal
12 planning to do abandoned stolen car removal out of UP right-of-
13 way. The day started with obviously our morning conference call
14 with the local manager which safety incidents were discussed that
15 had just occurred was on that morning call.

16 After that call had completed I hopped on a different safety
17 call for the region here, completed that call and went and met the
18 scrap metal contractor, showed them locations of the scrap metal.
19 Meanwhile I was waiting for Salvador Menzel and Sergio Torres to
20 arrive so we could go take care of our duties of the day.

21 And once Sergio and -- Sergio Torres and Salvador arrived we
22 job briefed of our plan of the day. After job briefing with Sal
23 he went to go top off with diesel at the diesel shop and I went to
24 take Sergio to the backhoe to Fifth Avenue Yard which is
25 approximately about two miles from here where the backhoe was at.

1 After dropping Sergio there and doing, you know, obviously
2 his inspection of the equipment and all that, the instructions for
3 Sergio were to head to 50th Avenue and wait for us until we got
4 there.

5 After Sergio left I went to 5th Avenue. One for to see Sal
6 go by after our last control point and also because there's a Form
7 B within those limits, so I wanted to read the Form B. After
8 obtaining all the track authorities and everything, obviously Sal
9 was given the track authorities in three segments.

10 And the reason that it's in three segments is because so I
11 can release behind as we are progressing toward a destination.
12 The Form B was read. Oh, track authorities were given to Sal.

13 Once the track authorities was given I was called to see if
14 he or I was going to read through the Form B. I told him I'll
15 take care of it; I'm here at 5th Avenue. And to go to 5th Avenue
16 and I waited at the road crossing.

17 And I read, I read through the Form B. Read him through the
18 Form B, went through the Form B, left the last control point,
19 which I was planning to release after he'd clear that. Comes on
20 the radio and says I am clear of -- which is Control Point NI009.
21 He said, I'm south of NI009, you may release behind.

22 I sat in the truck, was getting ready to release but I say,
23 you know what, let me just keep going down there, the dispatcher
24 isn't really asking for the track authority, so let me just go to
25 the crossing. I hesitated a little bit but then I decided to go.

1 I got up and then I thought, okay, maybe there's a train that's
2 going to come out.

3 But then I say, you know what, dispatcher hasn't said
4 anything, let me get you just back on the road and go to the
5 crossing. As I get to the crossing, got off the off ramp, go to
6 the first light, obviously it's in the morning. There was morning
7 traffic.

8 First light turns green, second light turns red. Then I
9 waited another little bit there and that's on High Street, the off
10 ramp on High Street. As I'm waiting to make a right on Coliseum
11 Way, that's when the emergency, emergency 9 tone comes in and
12 dispatcher says, responding to emergency.

13 And what I heard from the Amtrak engineer or conductor,
14 whoever responded was, we just struck a pickup truck. Said,
15 okay, well, until it was clearly on the radio, I said, well, it's
16 nearby.

17 And the second call came, dispatcher, said what location, 10
18 knot 7. I said, oh, my God, that's close to where we're going to
19 go. That area there is known for abandoned stolen vehicles to be
20 left on the track whenever they get high center and the thieves
21 just take off and leave the vehicle there.

22 So I assume it was probably one of them just left an
23 abandoned vehicle there so I still went to another stop sign there
24 that's for south -- for northbound vehicle exiting High Street off
25 the freeway.

1 When the second call comes in, a second call comes in and
2 they said it was -- it seems like it was a maintenance of way
3 pickup truck. So then I said, oh, I hope it's not the tow truck
4 company that was going to go out there and recover these vehicles.
5 So now I'm in this pressure to get there because I want to know,
6 you know, and I'm concerned.

7 So I get there. Third call comes in and I believe it was, it
8 was some type of equipment. I believe that's what they stated on
9 the radio. So when that call comes in I get to 50th Avenue, make
10 the left, and I seen a bunch of, a bunch of cars there, assuming
11 that they were waiting for the gates.

12 And since it was rush hour traffic was backed up. So I
13 turned on my lights. Everything went against traffic, went around
14 people honking, got up to the track, turned around and I see
15 yellow equipment. So I told the dispatcher it's definitely an
16 equipment but I just don't know which one.

17 A lot of things come to mind. So I got my pack (ph.) set,
18 turned the truck off because it's one of the unsafest areas here
19 in Oakland and got off. I didn't want to confirm anything on the
20 radio until I was 100 percent sure.

21 Walked up to the machine and it was Sal. It was the speed
22 swing operator in the machine. At first I thought that was it. I
23 turned around and he was still breathing so I went back another
24 time, checked him, and he was still breathing, and then that's
25 when I noticed that one of his legs was amputated.

1 We get training care from UP as far as the first day but I
2 didn't want to cause any more damage than there was, so I
3 hesitated. Got on the radio, told the dispatcher it's definitely
4 the operator. Did not mention names due to privacy and not to
5 public everything on the radio.

6 But I told him it's definitely the operator and we need
7 emergency personnel out here immediately. And minutes was
8 probably going by, to me it was hours. Finally the firefighter,
9 fire crews showed up, then the paramedics after that.

10 Obviously there was a lot of people either trying to help or
11 just trying to be nosy. I cleared everyone off the track,
12 especially the individuals that were out there with cell phones.
13 I requested the police department to assist in clearing everyone
14 off the track, because there was a lot of people on their cell
15 phones taking videos, pictures or whatever.

16 So I was, I was -- I stayed focused because I didn't want no
17 one -- so basically I was thinking about the family. So I made
18 some phone calls and my first phone call was obviously to the
19 dispatcher.

20 Second phone call, I believe, was to our director,
21 (indiscernible) Martinez, just to let him know what had happened
22 and then I believe the third call was to 911 because for me it was
23 taking forever to get any medical personnel out there.

24 Going back, retracting, once the paramedics got there and
25 everyone, I stayed back. I, you know, like I wanted to help but I

1 stayed back because they are the professionals. That's their job.
2 So once they started talking in, you know, their medical terms and
3 their retrieval plan terminology then, you know, I stayed back.

4 They took him out, then I seen someone with an IV, so then
5 they said, okay, he's still fighting for his life, he's still with
6 us, so that's a good sign. They picked him up, put him on the
7 gurney and took him away. And that's what I can recall. I
8 probably forgot something but that's, that's what happened out
9 there.

10 Q. Yeah. No, thank you, thank you for taking us through that
11 and, you know, again, you know, very understanding of how
12 difficult that is and, you know, thank you for what you did. So
13 were you, were you the first one to make it up there to the speed
14 swing?

15 A. I was the second employee.

16 Q. Okay.

17 A. The first employee was Sergio Torres which was the backhoe
18 operator. Sergio was at the crossing when this occur.

19 Q. Okay.

20 A. Well, he was at the location. I don't know where exactly was
21 he at the location but he was at the area there.

22 Q. Okay. Okay. So he took -- Mr. Torres took the backhoe
23 around to 50th Avenue. He did that by road, he just --

24 A. Yes, he wheeled it to 50th Avenue, 5th Avenue Yard is
25 approximately Milepost 7. That's 677.7. 50th Avenue is

1 approximately 10.77.

2 Q. Okay.

3 A. I mean, those are route track minus.

4 Q. Okay. And so as far as the -- you know, the reason that the
5 speed swing high rails as opposed to, you know, driving by road
6 like the backhoe, is it just the equipment's slower or --

7 A. As far as my knowledge and then what I was told is it travels
8 a lot quicker and it's safer to do it on the rails --

9 Q. Okay.

10 A. -- than on the, on the road.

11 Q. Okay. All right. So when they assembled this work group
12 you're the track inspector, your job was to get the track
13 authority to protect them when they're doing their work, right?

14 A. That's correct. My job was to provide the on track safety,
15 coordinate everything on the location with the Alameda County Auto
16 Theft Task Force and the Twain (ph.) Company that was going to
17 recover these vehicles.

18 Q. Okay. And what -- then if you don't know that's fine, we'll,
19 we'll get the answer. Sal, is his bid in job equipment operator?

20 A. Sal's bid in job is also a track supervisor, track inspector.

21 Q. Okay. And how about Mr. Torres, do you know?

22 A. Torres, I believe he is a backhoe operator.

23 MR. GORDON: Okay. All right. Well, thank you again for,
24 you know, taking us through that and I know it was difficult. I'm
25 going to pass it to my right.

1 Mr. Allen, if you'll go on the record and if you have any
2 questions?

3 MR. ALLEN: I'd like to just defer to the right for a minute.

4 MR. GORDON: Okay, all right. Felipe, anything from FRA?

5 MR. AYALA: Yeah, absolutely.

6 BY MR. AYALA:

7 Q. First question, Jose, I was going to ask you is where did you
8 guys have your initial job briefing, what was the location?

9 A. The initial job briefing was here in West Oakland at the
10 machines.

11 Q. Do you recall what time that took place?

12 A. I would say around 10, 9:45, 10.

13 Q. 9:45, 10?

14 A. Yes.

15 Q. Do you -- a little more specific where at? Where were the
16 machines located when you had the job briefing?

17 A. Specific meaning?

18 Q. Like was it, was it closer to Milepost 5, closer to main line
19 or towards the end of the yard?

20 A. Yeah. The machine, the machine was stored here by the yard
21 office approximately Milepost 4.75 parked next to the K rails and
22 right behind where his truck is currently parked at.

23 Q. And who all specifically attended this job briefing?

24 A. Sergio Torres, Salvador Menzel Reese (ph.) and myself.

25 Q. During this initial job briefing would you be able to kind of

1 briefly tell us the type of things that you guys discussed in
2 regards to what you were going to do and your type of on track
3 safety that you were going to provide, and kind of like your plan
4 to move the machine from here to your final destination?

5 A. Yes. Obviously your safety, our safety rules are safety
6 procedures that involve in moving equipment from the location here
7 and then it got to the assignment Sal was supposed to set on
8 roughly around Milepost 5.2, 5.25, where the end of the pavement
9 goes into Main Track No. 1, because it's safer for him to set on
10 at that location versus driving through the yard and going to the
11 nearest road crossing just because of the size of the machine.

12 At this location he could just pull up, jump the rail and set
13 on. That was discussed. And then the question was, that I
14 brought, do you want me to go ahead of you, go to the crossing
15 which is at 6.2 Market Street on the Niles (ph.) and pilot you?
16 He said, no, I know the territory, just get the track authority
17 and give them to me, which I said, okay, that's fine.

18 Q. Okay. And then so did you guys also discuss how you were
19 going to -- like which route you were going to take? Did you --
20 for example, did you take the road, did you take the freeway?

21 A. Yeah.

22 Q. Did you discuss like what your next meeting point was going
23 to be?

24 A. Yes. It was discussed that once he decided to go by himself
25 on the machine, on the tractor to head to the location of this and

1 wait for us until adjacent track authority was provided. We've
2 done this a couple of times prior, the same procedure, just to
3 wait there until adjacent the track authority was provided.

4 And then once the adjacent track authority was provided which
5 is Main Track No. 2 we were going to release the authority on Main
6 Track No. 1 and work the right-of-ways next to Main Track 2 with
7 the track protection there as a buffer. Once again, I don't know
8 what happened and what did he determine to do there.

9 Q. During, during your job briefing did you have any sort of
10 discussion about that the Amtrak 531?

11 A. I don't recall. I don't, I don't remember. Obviously I
12 don't remember. We discussed it; obviously we discussed adjacent
13 live tracks through there, yes.

14 Q. Okay. If you don't remember just you don't remember. So
15 once you arrived at 5th Avenue did you, did you speak in-person
16 with the foreman of that Form B or did you contact him via the
17 radio?

18 A. The foreman of the Form B was contacted over the radio.

19 Q. Okay. And did you see the speed swing go across the crossing
20 at 5th Avenue?

21 A. Yes.

22 Q. Do you recall if you had any issues activating the gates as
23 you went across or were the gates activated as he went across?

24 A. The gates were down as he was going over 5th Avenue Yard.

25 Q. From that location which route did you take back to 5th

1 Avenue, did you, did you use the highway or did you take roads or
2 to 50th Avenue?

3 A. To get to --

4 Q. From 5th Avenue to 50th Avenue?

5 A. I took Embarcadero and then merged onto 880 South.

6 Q. You said that you guys had performed this same job assignment
7 previously?

8 A. Yes.

9 Q. Do you recall how many times maybe?

10 A. With this equipment, twice.

11 Q. During those two previous times did you have to do the same
12 thing where you had to pick up the machine at the yard and then,
13 and then high rail it down to 50th Avenue?

14 A. Repeat the question again?

15 Q. Those previous two times that you did the same thing,
16 removing those cars, did you have to do the same thing, taking the
17 machine from West Oakland Yard and high railing it down to 50th
18 Avenue?

19 A. Yes.

20 Q. Those previous two times do you recall if it was the same
21 thing where you were on the No. 1 Track, high railed it all the
22 way down?

23 A. Yes, it was -- everything began on the one track because it's
24 a straight shot to the location with all the commuters on Main
25 Track 2. Once it's -- the rush hour slows down then that's when

1 we transfer onto the 2 and they can just run around, train track
2 around us.

3 Q. Those previous two times did you, did you shadow him on the
4 surface road?

5 A. The only big difference, yes. The only difference is that
6 the previous times I pilot him.

7 Q. So you were on the track with him --

8 A. Yes.

9 Q. -- the previous two times? Okay. While you guys were
10 communicating, you communicating with Sal, were you using the
11 radio channel?

12 A. Repeat the question again, please?

13 Q. The times that you communicated with Sal, for example, when
14 you, when you told him, you know, about the Form B, that he was
15 cleared through the Form B, were you using the radio channel?

16 A. Yes. Part of the communications was on the radio, yes.

17 Q. Do you recall what the radio channel is?

18 A. 4646.

19 Q. Once you -- you know, once you were at -- you know, you
20 realized that it was the speed swing that had been struck and you
21 made your way over there, do you recall seeing if Sal was wearing
22 his seatbelt?

23 A. Don't know.

24 MR. AYALA: All right. Thank you, Jose, I really appreciate
25 it. Those are all the questions I have for now.

1 MR. GORDON: All right. Thank you, Felipe. And, James, any
2 questions?

3 MR. RIDGWAY: I have no questions.

4 BY MR. NAGEL:

5 Q. Robert Nagel, Amtrak, N-A-G-E-L. I've got one question, did
6 you talk to Sal about what he was going to do when he got down to
7 50th if it was -- he was going to get off and wait for you or was
8 he going to stay on the main line until you got tied for on 2 to
9 get over, was that part of your briefing or any discussions?

10 A. Instructions was to wait until we got the other track
11 adjacent, Main Track No. 2 and then just transpose and release
12 Main Track No. 1 after we had positive protection on Main Track 2.

13 MR. NAGEL: Okay. That's all I had, thank you.

14 MR. GORDON: Okay, thank you. And, Jeremy, any questions?

15 MR. RITCH: No, sir.

16 MR. GORDON: All right. Jose, you're doing good. We'll take
17 another round and this one should be more brief. We're going to
18 go to Adam. I did forget Adam.

19 MR. ALLEN: That's all right.

20 MR. GORDON: Adam.

21 MR. ALLEN: A lot of the questions were asked.

22 BY MR. ALLEN:

23 Q. So you said that Sal's assigned job is the track inspector.
24 Do you know who's assigned to the speed swing?

25 A. Not as far as my knowledge I don't know who is assigned to

1 the speed swing.

2 Q. Okay. And you said that you guys have performed this job a
3 couple times. Was Sal involved in that or was it someone else?

4 A. On the speed swing it was Sal.

5 MR. ALLEN: Okay. That's all I've got for right now.

6 MR. GORDON: All right, thank you. Doing good, do you need a
7 break or anything, do you want to --

8 MR. TOVAR: No, I'm doing good.

9 MR. GORDON: All right.

10 BY MR. GORDON:

11 Q. As far as the assignment, who is it that made that job
12 assignment that said, hey, this is what we need you guys to do,
13 you know, work with this task force and go do this thing that
14 you've done before, who made that assignment?

15 A. Well, it's our manager that approves everything, Philip
16 Garber, manager of track maintenance.

17 Q. Okay.

18 A. Obviously everything was ran through him from there Philip
19 coordinates it with our special agents, UP special agents and then
20 they get in contact with the tow truck, and obviously I imagine
21 they get in contact with the, with the auto theft task force.

22 Q. Okay. And do you remember how much like knowledge you guys
23 had, like how long did you know that that was the work of that
24 day? Had you been planning it for a while?

25 A. Yes. Obviously it needs to get planned because it takes a

1 specialized operator to operate that machine. Also with the other
2 job tasks of the day there's equipment, for example, a backhoe,
3 gets utilized at a different location and they just have to
4 coordinate it because everything goes to one location, which was
5 to retrieve these vehicles, so it's coordination and planning.

6 Q. Yeah. So do you guys know like weeks ahead of time that that
7 was --

8 A. Oh, timeframe, I believe it was two weeks, two or three
9 weeks.

10 Q. Okay. And you'd said before that, you know, that you'd done
11 that work a couple of times before in that same location, right,
12 that's --

13 A. That's correct.

14 Q. Okay. How about other locations, have you worked?

15 A. With that machine it's just that one location.

16 Q. Okay, all right. Do you recall -- so while Sal was operating
17 on Main 1, correct?

18 A. That's correct.

19 Q. Did any other trains pass on Main 2 prior to the accident
20 train?

21 A. I don't remember.

22 Q. Okay. All right. And I've just got one more, you know,
23 thing to clarify in my mind, I think. So you said in the
24 briefing, I think, in response to Robert's question that he was to
25 wait there on 1 Track was the plan --

1 A. Yes.

2 Q. -- until you got there and secured time on 2, and then he
3 would have actually taken off of the track, cross No. 2 Track and
4 then the plan was to hold time on No. 2 to do the work, correct?

5 A. Correct. It was for us to get positive protection on Main
6 Track No. 2 and then transfer over.

7 Q. Okay.

8 A. The process isn't really working off the track; it's working
9 adjacent to the track on the right-of-way.

10 Q. Okay.

11 A. So we would just use the tracking time as an extra
12 protection.

13 Q. Okay. And the times that you've done this work in the past
14 it was always the same thing, you were getting the track time, Sal
15 was operating the speed swing, and Mr. Torres was with the
16 backhoe?

17 A. Yeah. Well, this situation, it's the first time we intended
18 to do it with two machines.

19 Q. Okay.

20 A. Obviously the speed swing has a better capability of lifting.
21 The backhoe has the capability of driving. So based on our plan
22 it was better to pick up the vehicles, leave them on, once there's
23 a spare track there, jump them over that spare track with the
24 speed swing and just have the backhoe driving to the nearest tow
25 truck off the road crossing.

1 Q. Okay. Okay. And all -- you're qualified on the territory;
2 Sal's qualified on the territory, correct?

3 A. Correct.

4 Q. And how about Mr. Torres, is he?

5 A. I can't answer that if he's qualified or not.

6 Q. Okay.

7 A. That's a question you would have to ask him.

8 MR. GORDON: Okay, all right. That's, that's what I've got
9 for clarification questions and I'll go around the table one more
10 time. Adam, anything?

11 BY MR. ALLEN:

12 Q. You may have already answered this, did you job brief with
13 the tow outfit that morning prior to going down there?

14 A. Yes, our initial starting time was going to be between 8 and
15 8:30 but we had special conference calls because of the incident,
16 safety incidents that just had occurred, at a safety regional
17 call, so that was delayed.

18 So that just backtracked, but I was in communication with the
19 towing company. I told them it's going to be around maybe 10:00.
20 He called back and said, how you guys doing? I said, okay, we're
21 at the operation currently here but we're just -- I'm getting
22 ready to head over there but we've got to wait for train traffic
23 now.

24 I believe it was two trains we were waiting for to clear so
25 we could start our tracking time and then hit them that way.

1 Q. Okay. So the two truck outfit was going to meet you at the
2 location?

3 A. At the location.

4 Q. Okay. In your original job briefing was the crossing at, I
5 believe, it's 50th, is it 50th Avenue or 50th Street?

6 A. Where the incident occurred?

7 Q. Yeah.

8 A. Yes, 50th avenue.

9 Q. Were you planning on utilizing that crossing for, for getting
10 on and off to do your job, was that, was that the end point?

11 A. No, not necessarily because this machine has the capability
12 of setting off and setting back on with no need of a road
13 crossing. Yeah. So we -- 50th Avenue can be a busy crossing so
14 sometimes when we switch over we switch it off the crossing
15 because it has that capability of just jumping the rail.

16 Q. Was there a plan that day to have any advanced warning or
17 flaggers at the crossing to do this work?

18 A. That wasn't discussed.

19 MR. ALLEN: Okay. I don't have any more questions.

20 MR. GORDON: All right. FRA, any additional?

21 BY MR. AYALA:

22 Q. Your communication between you and Sal, the speed swing
23 operator, you mentioned that they all -- they took place on the
24 radio, right?

25 A. Right.

1 Q. At any time did you guys ever call each other on cell phones
2 while he was moving from the yard towards 50th Avenue?

3 A. I don't recall exactly if I called them or not. The track
4 authority was given via text when it first initiated. They were
5 given to him via text. If he was moving or not that I do not
6 know.

7 Q. I'm going to try to just from my personal understanding. So
8 you obtained the track authorities, correct?

9 A. Correct. I requested them remotely via computer, remote
10 track authority, yes, via the computer.

11 Q. So when you received the track authorities did you receive
12 all three of them at the same time?

13 A. No. I received the first segment which was between control
14 point RB1 and I6 and that's where he was going to set basically
15 starting, set on, and then I requested NI6, yes, to NI9, yes, and
16 then the last authority NI9, no, to NI11, no.

17 Q. And then so did you provide these authorities via text
18 message?

19 A. Pictures of the authority on screen, a picture of the track
20 authority.

21 Q. When you sent him the pictures did you send like each
22 authority individually or --

23 A. Yes, yes.

24 Q. Okay. Did you ever speak with him regarding those
25 authorities?

1 A. The replies was I got them or thanks or something like that
2 and then I don't recall exactly. But, yeah, the response was I
3 got it on the, on the text.

4 Q. You know, earlier you, earlier you mentioned that Sal was
5 familiar with the territory. In your initial job briefing did you
6 guys discuss the limits that you were going to have to request to
7 move the machine from the open yard to 50th Avenue?

8 A. I don't recall, I don't remember.

9 Q. Oh, one more question. In regards to the speed swing itself;
10 did you guys have any issues with it at all that morning in
11 regards to like lights, horns?

12 A. Nothing was brought to my attention other than fuel.

13 MR. AYALA: Fine. Thank you, sir.

14 MR. GORDON: Any other questions, Amtrak?

15 MR. NAGEL: Yeah.

16 BY MR. NAGEL:

17 Q. Robert Nagel, Amtrak, N-A-G-E-L, follow-up, did you have an
18 idea of how many vehicles you were planning to remove that day?

19 A. It was counted of nine vehicles at the time. Obviously
20 there's more now but at that time nine vehicles were accounted
21 for.

22 Q. And what grade crossing were you going to work with the tow
23 truck company to drag the vehicles to the haul off, was it 50th or
24 was it a different one?

25 A. 50th Avenue.

1 Q. Another question was, there was only two tracking time
2 segments to be pulled --

3 A. Three.

4 Q. There was three?

5 A. Three.

6 Q. Okay. And also when he -- where he set on was that inside
7 the yard here at West Oakland with the speed swing?

8 A. He set on main track inside the West Oakland Yard.

9 MR. NAGEL: Okay. That's all I have.

10 MR. GORDON: All right, thank you. Jeremy, anything on the
11 second round?

12 MR. RITCH: Just one question.

13 BY MR. RITCH:

14 Q. Did anyone instruct Sal to clear the track once he arrived at
15 50th Avenue?

16 A. I did not instruct Sal to set off or do anything. The
17 instructions was to wait until we got positive protection on Main
18 Track 2.

19 BY MR. GORDON:

20 Q. Okay. So nine vehicles, about how much time did you guys
21 kind of allotted the entire day that day for that work?

22 A. Yes. I mean, obviously the day is planned for that but since
23 we had both equipment in there, we're basically going to double,
24 double team it just to make it, you know, a safe or easier process
25 to recover those vehicles.

1 Q. Okay. And so you mentioned then the times that you've done
2 this in the past you piloted and so just for people who aren't
3 familiar with railroad, did you set on your high rail; you set
4 your high rail vehicle on ahead of him?

5 A. That's correct, I would go to, I believe, if I can recall,
6 Milepost 6.2 Market Crossing on the Niles. I would set on there
7 and just wait for Sal and that's under our first initial segment
8 of time that I would request.

9 Q. Okay. And in those times past when you would get your high
10 rail vehicle up to 50th would you secure No. 2 Track?

11 A. I would -- yeah, I would stay there and then obviously once I
12 got Main Track No. 2 I would just let the speed swing, you know,
13 switch over or set off and then I would set my vehicle off,
14 transfer onto Main Track No. 2.

15 Put the vehicle back on there just so I could go back and
16 forth with the chain and the slings that are needed instead of
17 walking from the location to the crossing.

18 Q. Okay.

19 A. I would just use the truck.

20 Q. Okay. And was that the plan that day if you would have
21 gotten to your track --

22 A. Yes.

23 Q. -- you would have set on, set your high rail on after you got
24 a track authority and worked it the same way?

25 A. Yes. I mean, the intention was to do that but at the same

1 time there's -- some of the officers there or the tow truck owner,
2 I probably would have just stayed at the crossing unhooked and
3 then have the other people hook the vehicles back at the, at the
4 location.

5 MR. GORDON: All right. Well, thank you. That's what I've
6 got. I'm going to look around the room and anybody just raise a
7 hand if we've got anything? (No audible response.) I think we're
8 good. We're going to go off the record there.

9 (Whereupon, the interview was concluded.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: AMTRAK TRAIN COLLIDES WITH
 EXCAVATOR IN EAST OAKLAND,
 CALIFORNIA ON JULY 15, 2022
 Interview of Jose Tovar

ACCIDENT NO.: RRD22FR011

PLACE: Oakland, California

DATE: July 17, 2022

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been transcribed
to the best of my skill and ability.



Wade Donovan
Transcriber